

**Region 5 Response to Question on Consultation with Tribes on Mining Issues
(Final Draft – 4/13/16)**

Question for the Record from the HAC Appropriations Subcommittee Hearing: *How aggressively are you making sure that tribal consultation is moving forward, especially in the area of the sulfide mining?*

Response: EPA follows the national tribal consultation policy issued on May 4, 2011. In order to ensure adherence to this policy, certain EPA Regional offices dealing with mining issues and tribal consultation sometimes go a step further and develop regional consultation guidance and standard operating procedures for specific programs. Typically, the water quality standards (WQS) program, National Environmental Policy Act (NEPA), National Pollutant Discharge Elimination System (NPDES) and Total Maximum Daily Load (TMDL) programs are involved in tribal consultations and/or informational meetings related to sulfide mining as well as iron-ore mining.

In the Region 5 WQS program, any WQS action submitted to EPA for formal agency approval, involves an analysis of whether or not to invite consultation with tribes. Tribes are invited to consult whenever state/tribal WQS actions may have an impact on tribal interests. Region 5 has routinely consulted with tribes on a variety of state WQS actions including nutrient criteria, human health criteria methodologies, BEACH Act guidance, and WQS variances for mercury, copper and chloride. Invitations to consult are offered to tribes that may be directly downstream of a state WQS action, adjacent to a WQS action, including where an action may have the potential to affect rights in ceded territory of those tribes which have retained hunting, fishing and gathering rights outside their reservations.

In the Region 5 impaired waters list/TMDL program, consultation with tribes occurred in 2012 and in 2014 on EPA's review of Minnesota's biennial Section 303(d) list of impaired waters and the revisions to the Minnesota Statewide Mercury TMDL in 2012 and 2014. EPA discussions with tribal representatives on these topics have included tribal concerns related to wild rice waters in Minnesota and the potential deleterious impacts of elevated sulfate concentrations on tribal waters and waters upstream of tribal reservation lands. In September 2015, EPA held a tribal consultation discussion on EPA's review of the Minnesota 2014 Section 303(d) submittal with representatives of the Fond du Lac and Grand Portage tribes. EPA is currently reviewing the concerns raised by the tribes during this discussion in the context of EPA's final action on the 2014 303(d) list. EPA anticipates re-engaging the tribes to discuss EPA's consideration of tribal concerns on the 2014 303(d) list in the Spring of 2016.

Specific interactions with tribes involving sulfide mining as well as other mining issues, have included both formal consultation with tribal leaders and representatives, as well as informational meetings with tribal staff; several of those are listed below. In addition, the Region holds several sets of monthly calls with tribal staff to discuss water program, mining and WQS issues.

- **Crandon Mine** – Close coordination and consultation with Sokaogon Chippewa Community, Forest County Potawatomi, and Menominee Tribes on water resource issues and other issues.
- **White Pines Mine** – Close coordination and consultation with Bad River, Lac du Flambeau on water resource issues and other issues
- **Gogebic Mine** – Close coordination and consultation with the Bad River Tribe on water resource issues and other issues
- **Mesabi Nugget (December 2012)** – formal consultation on Minnesota’s WQS variance for specific conductance, bicarbonate, hardness, and dissolved solids
- **PolyMet Corporation–NorthMet Project (proposed copper/nickel/precious metals mine) (April 2016)** – informal discussion with tribal staff on their concerns related to the Environmental Impact Statement and permitting under the Clean Water Act
- **Potential Revisions to Minnesota’s Wild Rice WQS (August 2015; April 2016)** – attended Minnesota’s formal discussions with tribes (Aug 2015) and had informal discussions with tribal staff and tribal leaders (April 2016)
- **Minnesota’s Section 303(d) Impaired Waters List (September 2015)** – formal consultation on the Minnesota 303(d) list including concerns about potential deleterious impacts of elevated sulfate concentrations on tribal waters and waters upstream of tribal reservation lands

Tribes in Region 5 are aware that they do not need to wait for a consultation invitation from the various EPA programs, but may request consultation on any EPA action at any time. Thus far, EPA is aware of concerns related to mercury in fish, methylation of mercury due to increased sulfates, impacts to downstream tribes with EPA-approved WQS, adverse impacts to treaty resources including wild rice and migratory waterfowl. There are several mines in the Region 5 states of MN, WI and MI and EPA will continue to consider impacts to tribal interests.